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July 29, 2002

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street  
TW A325  
Washington, D.C. 20554


**Re: Amendment of Section 73.202(b)  
Table of Allotments  
FM Broadcast Stations  
(Arlington, The Dalles and Moro, Oregon, and  
Covington and Trout Lake, Washington)  
MB Docket No. 02-136; RM-10458**

Dear Madam Secretary:

Transmitted herewith on behalf of Mercer Island School District and Peninsula School District No. 401 is an original and four copies of their Joint Comments in Opposition in regard to the proposed reallocation of Channel 283C3 from The Dalles, Oregon to Covington, Washington, pursuant to the Notice of Proposed Rule Making, DA 02-1339, released June 7, 2002, in the above-referenced proceeding.

Should any questions arise concerning this matter, please contact this office directly

Respectfully submitted,

  
Howard J. Barr

Enclosure

cc: Service List

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Covington and Trout Lake, Washington	)	

To: Chief, Allocations Branch

JOINT COMMENTS IN OPPOSITION

MERCER ISLAND SCHOOL DISTRICT  
PENINSULA SCHOOL DISTRICT NO. 401

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## **SUMMARY**

The proposed reallocation of Channel 283C3 from The Dalles, Oregon to Covington, Washington will result in the shifting of service from an underserved rural area to a well served urban area without any countervailing public interest benefits. As a result, the proposal is in contravention of Section 307(b) of the Communications Act and the Commission's responsibility to achieve a "fair, efficient and equitable distribution of radio service".

Application of the Commission's Tuck criteria demonstrates that Covington does warrant a first local service preference because it is not independent of the Seattle Urbanized Area. As a result, the Commission must consider the proposal under its fourth allotment priority. Under that priority, Covington should be attributed with the 19 or more other radio services that currently serve the Seattle Urbanized Area.

Furthermore, the proposal will result in the loss of valuable services at Mercer Island and Gig Harbor, Washington

Accordingly, the proposal will not result in a preferential arrangement of allotments and should be denied.

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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To: Chief, Allocations Branch

**JOINT COMMENTS IN OPPOSITION**

Mercer Island School District ("MISD") and Peninsula School District No. 401 ("Peninsula") (collectively "Joint Commentors"), by their counsel, hereby submit their Joint Comments in Opposition to the above-captioned proposal of Mid-Columbia Broadcasting, Inc. ("Mid-Columbia"), licensee of station KMCQ(FM), channel 283C (104.5), The Dalles, Oregon, and First Broadcasting Company, L.P. ("FBC") (the "Joint Petitioners") seeking to amend the FM Table of allotments by changing the KMCQ(FM) community of license from The Dalles, Oregon to the Seattle bedroom community of Covington, Washington, and to allot Channel 283C1 to Moro, Oregon, 261C2 to Arlington, Oregon and Channel 226A to Trout Lake, Washington in order to provide service to unserved and underserved areas that will result from the proposed reallocation.

**INTRODUCTION**

This proposal is little more than an effort to migrate KMCQ(FM) from a rural community to an extremely well served urban area. Grant of this reallocation proposal will result in

KMCQ(FM) being spirited some 240 miles from the rural community of The Dalles, Oregon to the extremely well served Seattle Urbanized Area. As demonstrated herein, the proposed reallocation fails to result in a preferential arrangement of allocations, fails to serve the public interest and should be denied.

Moreover, adoption of the proposal will significantly adversely affect the nearby communities of Mercer Island and Gig Harbor, Washington. MISD is the licensee of co-channel FM broadcast station KMIH, Mercer Island, Washington. Peninsula is the licensee of FM broadcast station KGHP and co-channel FM translator K283AH, both Gig Harbor, Washington. The Joint Petitioners failed to even consider these stations in their technical analysis, both of which provide valuable services to their respective communities.

The proposed reallocation of channel 283C to Covington is mutually exclusive with the longstanding public interest operations of KMIH(FM) and KGHP(FM)/K283AH and will result in the loss to the Gig Harbor and Mercer Island Communities of those valuable services. No countervailing public interest benefit will be obtained by the reallocation of channel 283C to the already well served Covington area.

The following is shown in support thereof:

**I. THE PROPOSED REALLOCATION FAILS TO ACHIEVE A FAIR, EFFICIENT AND EQUITABLE DISTRIBUTION OF RADIO SERVICE**

The Commission's paramount responsibility in its implementation of Section 307(B) of the Communications Act is to achieve a "fair, efficient and equitable distribution of radio service ...” *National Association of Broadcasters v. FCC*, 740 F.2d 1190 (D.C. Cir. 1984). “The

ultimate touchstone for the FCC is ... the distribution of service, rather than of licenses or stations; the constituency to be served is people, not municipalities.” *Id.*

The Commission itself has recognized that the grant of a dispositive preference, such as that sought here, to an applicant proposing a first local service near a metropolitan area has the potential to produce “anomalous results” that can contravene section 307(b)’s statutory mandate. *Faye & Richard Tuck*, 3 FCC Rcd 5374 (1988).<sup>1</sup> To avoid such results, the Commission specifically stated that it will not apply the first local service preference of its allotment criteria blindly so as to avoid allowing an “artificial or purely technical manipulation of the Commission’s 307(b) related policies” when a station seeks to reallocate its channel to a suburban community in or near an Urbanized Area. *Amendment of the Commission’s Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7096 (1990).

That is precisely, however, what the Joint Petitioners have proposed; an “artificial [and] purely technical manipulation of the Commission’s Section 307(b) policies.” *Id.* The proposal will result in the shifting of service from an underserved rural area to a well served urban area without any countervailing public interest benefits. On top of that, it will result in the loss of longstanding first local services at Gig Harbor and Mercer Island. Application of the *Tuck* criteria consistent with the mandates of Section 307(b) demonstrates that the Seattle bedroom community of Covington is not independent of, but rather interdependent with, the Seattle Urbanized area and that the proposal is undeserving of a first local service preference. *See*

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<sup>1</sup> The FM allotment criteria are as follows: (1) first aural service; (2) second aural service; (3) first local service; and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

*Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951), and *RKO General, Inc. (KFRC)*, 5 FCC Rcd 3222 (1990).

Furthermore, the proposed reallocation of Channel 283C is mutually exclusive with the existing operations of KMIH(FM), Mercer Island, Washington on co-channel 283, licensed to misd, and FM translator K283AH, Gig Harbor, licensed to Peninsula. The stations serve as valuable training grounds for students of the school districts and are a significant asset to their communities. The public interest will most definitively fail to be served in the event Channel 283C is reallocated from The Dalles, Oregon to Covington, Washington at the expense of KMIH(FM) and K283AH.

## **II. SECTION 307(B) PRECEDENT WARRANTS DENIAL OF THE PROPOSAL**

### **A. Criteria Under Which the Proposal Must be Evaluated**

*Huntington, Tuck* and *KFRC* each involved competing applications for new AM stations. In *Huntington* one applicant proposed Los Angeles as the community of license while another proposed suburban Huntington Park located six miles from Los Angeles' center. The facilities of each would cover substantially all of the Los Angeles metropolitan area, including Huntington Park. *Huntington*, 192 F.2d at 35. The court affirmed the Commission's decision not to award a Section 307(b) preference to Huntington Park, notwithstanding its finding that Huntington Park was "an independent municipality with a population slightly less than 30,000," and possessed of its own civic, social, religious, educational and governmental organizations. *Id.*

Tellingly, the Commission held that Huntington Park "might well be entitled to" a local radio service, rather than the regional facility which the applicant has proposed. That sentiment applies likewise to this situation. While Covington may, *arguendo*, be entitled to a local radio

service, the same cannot be said for the regional facility the Joint Petitioners propose. The Commission itself has recognized that a city can be “a cognizable community with local needs and interests” while also being “so integrally related to neighboring communities as to be part of a single larger community for Section 307(b) purposes.” *See New Radio Corp.*, 804 F.2d 756, 762 (D.C. Cir. 1986). *See also Arizona Number One Radio, Inc.*, 2 FCC Rcd 44 (1987), *aff’d mem. Sub nom. Interstate Broadcasting System v. FCC*, 836 F.2d 1408, (D.C. Cir. 1988).

In *Tuck*, the Commission established the following three criteria for determining whether to award a first local service preference in situations, such as this, where the petitioner seeks a reallocation from a rural area to an area in or near a metropolitan area:

- Signal population coverage (i.e., the degree to which a station would provide coverage not only to the suburban community, but to the adjacent metropolitan area as well;
- The size and proximity of the suburban community relative to the larger central city; and
- The interdependence of the suburban community with the central city, as determined by examining eight separate factors.

*Tuck*, 3 FCC Rcd at 5377-78.

The city of Richmond (population 74,676), though within the San Francisco-Oakland Urbanized area, was located 16 miles northeast of San Francisco across the San Francisco Bay. *KFRC*, 5 FCC Rcd 3222. Notwithstanding the existence of a number of factors showing Richmond to be an independent community in and unto itself,<sup>2</sup> the Commission found that grant of a Section 307(b) preference would produce an anomalous result. *Id* at 3223.

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<sup>2</sup> Richmond was an incorporated city with its own city council-city manager government that provided a number of municipal services; was part of the Richmond Unified School District and had a budget in excess of \$117 million in 1984-85. Additionally, 31% of Richmond’s 28,739 person workforce worked in San Francisco while only 2% worked in San Francisco. Richmond also had a weekly shopper newspaper, and a number of cultural and recreational facilities, churches, medical facilities, civic and other organizations. Richmond telephone numbers

The Commission found that the Richmond technical proposals were substantially similar to those put forth by the San Francisco applicants, finding that they would serve not only the Bay Area, but a much larger area as well. The Commission also noted that Richmond was just 1/9<sup>th</sup> the size of San Francisco and that it was located only 16 miles away. Thus, the Commission found that the first two of the *Tuck* standards “strongly favor[ed] applying *Huntington* and not giving a Section 307(b) preference to the Richmond applicants.” *Id.* Most importantly, the Commission found that the evidence did not establish Richmond to be independent of the cities central to the area, i.e., San Francisco and Oakland.

**B. The Commission Must not Blindly Apply the Allotment Criteria Here and Allow its Section 307(b) Policies to be Artificially Manipulated**

It bears repeating that the Commission’s paramount responsibility in its implementation of Section 307(B) of the Communications Act is to achieve a “fair, efficient and equitable distribution of radio service ...” *National Association of Broadcasters v. FCC*, 740 F.2d 1190 (D.C. Cir. 1984). “The ultimate touchstone for the FCC is ... the distribution of service, rather than of licenses or stations; the constituency to be served is people, not municipalities.” *Id.*

The Commission has stated that:

[I]t would be naïve for us to ignore that granting a dispositive preference to an applicant proposing a first local transmission service near a metropolitan center, without regard to the efficiency of the applicant’s proposed use of the spectrum, has the potential to produce anomalous results that would seem to contravene the original statutory mandate of section 307(b) ...

*Tuck*, 3 FCC Rcd at 5374. The Commission must therefore consider whether a given reallocation proposal will result in a shifting of service from an underserved rural to a well served urban area

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were listed in a separate directory and calls to San Francisco and Oakland were toll calls. *KFCR*, 5 FCC Rcd at 3222-23. *See also* 4 FCC Rcd 4997, 4999 Rev. Bd. 1989).

and the public interest consequences of such a change. *See New Community of License*, 5 FCC Rcd at 7096. Consistent with its determination not to “apply the first local service preference of its allotment criteria blindly,” the Commission has “consistently given little or no weight to claimed first local service preferences if, given the facts and circumstances, the grant of a preference would appear to allow an artificial or purely technical manipulation of the Commission’s 307(b) related policies. *Tuck*, 3 FCC Rcd at 5374.

A fair, efficient and equitable distribution of radio service, rather than the distribution of licenses to particular communities warrants denial of the Joint Petitioners proposal. *See NAB v. FCC*, 740 F.2d at 1190. The Commission must not only review this reallocation proposal pursuant to its *Tuck* criteria, but it must do so in a manner consistent with Section 307(b), *Huntington* and *KFRC*.

### **III. JOINT PETITIONERS HAVE FAILED TO DEMONSTRATE THAT COVINGTON IS INDEPENDENT OF THE SEATTLE URBANIZED AREA**

The following criteria demonstrate that Covington is not independent of the Seattle Urbanized Area. *Tuck*, 3 FCC Rcd at 5377-78.

#### **A. Signal Population Coverage**

Contrary to Joint Petitioners’ contention, proposed channel 283C3 allotment at Covington will serve far in excess of 8.8% of the urbanized area. Attached as Appendix A is a Dataworld study showing propagation contours from the proposed site based upon the minimal information (minimum Class C3 – 25kw, 100m HAAT) supplied by the Joint Petitioners.<sup>3</sup> Given that the proposed transmit site is located in the foothills of the Cascade Mountains, Joint

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<sup>3</sup> Noticeably, neither Joint Petitioners contour maps nor Joint Commentors contour maps identify Covington as a place.

Commentors believe that, if given the RCAMSL, the propagation into the Urbanized Area would actually likely be much greater.

Appendix A demonstrates that fully 41% of the proposed 70 dBuV/m contour (covering 285.262 square km – including areas covered by water) and 31% of the 60 dBuV/m contour (covering 5833.125 square kilometers – including areas covered by water) areas consist of Urbanized Areas. The total Urbanized Area covered by the 60 dBuV/m contour is approximately 1808.462 square kilometers; 1734.082 square kilometers of which belongs to the Seattle Urbanized Area. The total Urbanized Area covered by the 70 dBuV/m contour is approximately 947.606 square kilometers; all of which belongs to the Seattle Urbanized Area.

The entire Seattle Urbanized Area covers approximately 2433.365 total square kilometers (including areas covered by water) (and approximately 2185.96 square kilometers excluding areas covered by water). Accordingly, while the proposed 70 dBuV/m contour will not encompass more than 50% of the Seattle Urbanized Area, it does encompass 39% of the total area (71% of the total Seattle Urbanized Area is within the proposed 60 dBuV/m contour) – far in excess of the 8.8% coverage proffered by Joint Petitioners.<sup>4</sup>

As indicated above, if given the RCAMSL, the propagation into the Urbanized Area would actually likely be much greater. Thus the 70 dBuV/m and 60 dBuV/m likely encompass far more than 39% and 71% of the Seattle Urbanized Area.

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<sup>4</sup> Noticeably, neither Joint Petitioners contour maps nor Joint Commentors contour maps identify Covington as a place.

### **B. Size and Proximity to the Central City**

Covington has a 2000 Census population of 13,783<sup>5</sup> (approximately the same size as The Dalles) whereas Seattle has a 2000 Census population of 563,374. *See* Attachment II hereto. Accordingly, Covington is less than 2.5% -- or 1/40th of the Size of Seattle. The Seattle Urbanized Area has a 2000 Census population of 2, 712,205, making Covington 1/20000 the size of the Urbanized Area. Attachment II. Covington is located just 9.3 miles from Seattle.

The substantial disparity in size between Covington and Seattle and Covington and the Seattle Urbanized Area, along with the proximity between the two, strongly suggests that Covington is interdependent with the much larger central city of Seattle. *See KFRC*, 5 FCC Rcd at 3223 (Richmond interdependent with central cities despite the fact that it was not contiguous with either Oakland or San Francisco, was located 16 miles away and was 1/9<sup>th</sup> the size of San Francisco). Covington, of course, is located much more proximately to Seattle than was Richmond to San Francisco, and, by comparison, is significantly smaller. This criteria therefore strongly suggests that Covington is interdependent with, rather than separate from, Seattle.

### **C. Covington is Interdependent with Seattle**

As for the third of the *Tuck* criteria and its eight factors, the evidence demonstrates that Covington is completely interdependent with the Seattle Urbanized Area. The factors to be examined are as follows:<sup>6</sup>

- (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community;

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<sup>5</sup> 38,023 persons live in the 98042 area code which encompasses Covington. *See* Attachment I hereto.

<sup>6</sup> *Tuck*, 3 FCC Rcd at 5378.

- (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests;
- (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area;
- (4) whether the specified community has its own local government and elected officials;
- (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code;
- (6) whether the community has its own commercial establishments, health facilities, and transportation systems;
- (7) the extent to which the specified community and the central city are part of the same advertising market; and
- (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools, and libraries.

**1. Extent to Which Residents of Covington Work in the Town of Covington**

The Joint Petitioners seek to avoid their burden to establish that a majority of Covington residents work within that community. *See Pleasonton, Bandera and Schertz, Texas*, 515 FCC Rcd 3068, 3071 (Allocations Branch 2000) (“*Schertz*”). Merely showing that employment opportunities exist within a community, as Joint Petitioners have sought to do, “is not sufficient to establish that a majority of residents live and work in the community, as we have generally required.” *Id.*

While specific Census data may not be available, one need look no further for relevant information than Covington’s own website for confirmation that the majority of Covington residents do not work in Covington:

In 1998, there were estimated to be 2,590 jobs within the Covington Urban Growth Area made up of 234 employing units (includes the addition of 110 jobs for Tahoma High School which is outside of City Limits but within Urban Growth Area).

City of Covington Comprehensive Plan, 2. Land Use Element, pp 4-5. *See* Attachment III hereto.<sup>7</sup> The report does not indicate how many other of these jobs are located outside of the city limits. Tahoma High School is part of Tahoma School District No. 409, which is based in Maple Valley.

Census Bureau statistics indicate that Covington possesses a civilian labor force of 7,350 persons. *See* Attachment II. Even assuming, arguendo, that each of the 2,590 jobs were within the Covington city limits and that each job was filled by a Covington resident, at a maximum, only 35% of Covington's civilian labor force (and only 18% of Covington's total population) can work in Covington.<sup>8</sup> Put another way, at a minimum 65% -- or the vast majority of Covington's workforce (and 82% of its population) -- must work outside of Covington and elsewhere within the Seattle Urbanized Area.<sup>9</sup>

Additional Census data indicate that the vast majority of Covington residents are not employed in that community but rather elsewhere in the Seattle Urbanized Area. According to the 2000 census, 38,023 persons lived in zip code 98042, the zip code that encompasses Covington. Of those, 21,033 are over the age of 18, but under the age of 62 and should be considered employable. *See* Attachment I hereto. Census data also indicates that only 3701 persons are employed within the 98042 area code. Even assuming that each of those 3701 persons working within the 98042 area code also reside there, only 17.6% of the employment age 98042 residents work within their home area code. Put another way, using the same assumption,

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<sup>7</sup> Only pages 1-5 are reproduced here. A full copy may be obtained at: [http://www.ci.covington.wa.us/comprehensiveplan/02%20Land%20Use%20Element%20\(September%2025,%202001\).htm](http://www.ci.covington.wa.us/comprehensiveplan/02%20Land%20Use%20Element%20(September%2025,%202001).htm).

<sup>8</sup> Joint Petitioners conceded that the figure is likely far lower.

<sup>9</sup> *See Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (Allocations Branch 2001) (finding "significant" the fact that 46.5% of employment age residents worked outside of the proposed community of license and within the larger nearby central city).

over 82% of the employment age residents residing within the 98042 area code work outside of that zip code. Again, relevant statistics demonstrate that the vast majority of Covington's workforce is employed outside of Covington.

Perhaps most telling are the Census Bureau's statistics indicating that the mean travel time to work for Covington residents was 33.9 minutes. *See* Attachment II. Of the 7,013 persons in Covington that were employed – out of a civilian labor force of 7,350 – 6,899 commuted to work. *Id.* Of those, 6,472 commuted via vehicle (134 used public transportation, 27 walked, 29 used other means and 237 worked at home). Given that it takes approximately five (5) minutes to travel across Covington by vehicle, it must be presumed that the mean citizen does not work in Covington, but elsewhere in the Seattle Urbanized Area. This analysis is consistent with the Census Bureau statistics demonstrating that the vast majority of residents within the Covington zip code are employed outside of that area.

The evidence demonstrates that a majority of the Covington workforce are employed outside of Covington and elsewhere within the Seattle Urbanized Area. Accordingly, the evidence under factor 1 strongly suggests that Covington is interdependent with the larger Seattle Urbanized Area.

## **2. Newspapers and Other Media**

Joint Petitioners concede that Covington does not have its own daily newspaper and so they seek to rely on the daily *South County Journal*. According to information provided by that paper, however, the paper is distributed not only to residents of Covington, but to residents in the surrounding areas of Renton (zip codes 98056, 98059, 98055 and 98058), Kent (zip codes 98032, 98031 and 98042) and Auburn (98001, 98002 and 98092). *See* Attachment IV hereto. Of the

22,161 copies distributed on a daily basis, only 4210 are distributed in the 98042 zip code meaning that the vast majority are distributed elsewhere in the urbanized area.

The *South County Journal* is not published in Covington, but in Kent, Washington. It provides its address as 600 South Washington, Kent, WA 98032. DailyEarth.com, The Global Newspaper Directory (<http://www.dailyearth.com/USNews/washington.html>) advises that the *South County Journal* serves the southern King County communities of Kent, Auburn, Des Moines, Normandy Park, Sea Tac and Federal Way. Attachment V hereto. It notably fails to mention Covington. Covington is not distinct enough even to warrant association with its supposed daily newspaper.

Not only does Covington not have a daily newspaper, it does not have a weekly paper either. The nearby and dominant community of Kent does, however -- the Kent Reporter which serves as the only weekly in the area. The Kent Reporter is published by the same company that publishes the Daily Journal. In summary, there is no Covington newspaper of any kind.

The Commission found it "significant" in *KFRC* that Richmond did not have its own daily newspaper, particularly because the San Francisco daily newspaper had such wide distribution throughout the Bay area. A similar situation exists here.

In addition to the South County Journal, the Seattle Urbanized Area is served by not just one, but two daily newspapers: the Seattle Times and the Seattle Post-Intelligencer, both of which have South King County bureaus (as does the Morning News Tribune of nearby Tacoma). DailyEarth.com describes The Seattle Times as:

the largest daily newspaper in Washington state, and the largest Sunday circulation paper in the Northwest, is a great resource for

Pacific Northwest news. The Seattle Times provides extensive cover of Seattle-area Arts & Entertainment, Pacific Northwest businesses, technology news and local news. Good source for sports news on the Seattle Seahawks , Seattle Mariners, Seattle Supersonics, University of Washington Huskies, Washington State University Cougars and snow sports

DailyEarth.com describes The Seattle Post-Intelligencer as:

The Post-Intelligencer serves the entire Seattle metro area and also provides news coverage of the entire Pacific Northwest. The Post-Intelligencer is the only newspaper in Washington with statewide circulation. The Post-Intelligencer is a good source for news on local businesses, a Seattle neighborhood news section, science & technology, venture capital in the Pacific Northwest and local sports.

See Attachment V. Given the foregoing, the lack of a daily newspaper here is at least as significant here as in *KFRC*.

Joint Petitioners also rely on *Washington CEO*, indicating that it is located in Covington, as being significant to Covington's independence. But as Joint Petitioners themselves note, the magazine's location in Covington is mere happenstance as its primary function is to provide "features [on] local businesses **in the State**. No mention is made of its relevance to Covington other than its supposed location there.

Following is *Washington CEO*'s own description of its publication:

*Washington CEO* magazine serves as the only statewide business magazine targeting Washington's business owners, top-level managers and executives. The magazine serves not only as a resource to learn about regional business trends taking place, but also to gain insight into the personalities shaping the region's economy. Named by *Folio: Magazine* in 1998 as the nation's best regional business magazine and winner in 1995 of the Western Publications Association Maggie Award for best business magazine, the magazine is strengthening its editorial reporting by

expanding its coverage of business news and by offering more thought-provoking commentary.

*See Attachment VI hereto.*

The magazine then serves the needs and interests of the entire populace of the State of Washington and not merely those residing in Covington. Accordingly, the magazine is devoid of any relevance to Covington for these purposes.

Moreover, its location in Covington is suspect at best. *Washington CEO* is published by Fivash Media Group which identifies itself as being headquartered in Seattle. *Id.* The *Washington CEO* website gives the publication's address as 200 West Thomas Street, Suite 450, Seattle, Washington 98119. *Id.* Again, this magazine is devoid of any relevance to Covington insofar as this proceeding is concerned.

Additionally, the fact that Covington has its own website is insignificant. Covington's website follows the standard of all cities in Washington that run their own websites and is indicative of nothing other than the fact that Covington is a city. Many other small communities in the general vicinity that are likewise interdependent with the Seattle Urbanized area – such as Mercer Island ([www.ci.mercer-island.wa.us](http://www.ci.mercer-island.wa.us)), Maple Valley ([www.ci.maple-valley.wa.us](http://www.ci.maple-valley.wa.us)) and Kent ([www.ci.kent.wa.us](http://www.ci.kent.wa.us)) run their own websites.

### **3. Community Perception**

Joint Petitioners did not provide even a single statement from a Covington community leader as to the issue of whether they perceive Covington to be separate from the larger Seattle Urbanized Area. Instead, Joint Petitioners merely recite basic facts regarding Covington's incorporation in 1997 and extract a quote from the City's Vision Statement. This falls far short

of establishing that Covington's leadership perceive the community to be separate from, and independent of, the Seattle Urbanized Area.

**4-5. Whether the Specified Community has its Own Local Government and Elected Officials/Own Telephone Book Provided by the Local Telephone Company or Zip Code**

Covington does have its own local government and elected officials. This, however, is virtually the lone element in the entire analysis standing in favor of Joint Petitioners. The Commission though, will consider a community as independent only when a majority of the Tuck factors demonstrate that the community is distinct from the urbanized area. *See, e.g., Parker and St. Joe, Florida*, 11 FCC Rcd 1095 (1996). Here though, only one element out of eight factors to be examined within the context of three overarching criteria suggest a finding of independence. The Tuck factors and criteria here are overwhelmingly in favor of a finding that Covington is interdependent with Seattle and the Seattle Urbanized Area.

Contrary to Joint Petitioners allegation, Covington does not have its own zip code. Rather, Covington is within the boundaries of 98042 which is associated with Kent, Covington and Lake Sawyer. Attachment VII hereto. The U.S. Postal Service lists Kent as the main community for zip code 98042. Likewise, the zip code listing for Covington in the Qwest 2001 telephone directory directs one to "See Kent." Attachment VIII hereto. Furthermore, according to the U.S. Census, only 36% of those residing in zip code 98042 reside in Covington. Attachments I and II.

Joint Petitioners concede that Covington does not have its own telephone book. Not only does Covington not have its own phone directory, but the local 2001 Qwest directory does not even separately identify Covington in its listings. *Id.*

By way of comparison, Gig Harbor, KGHP(FM)'s community of license has its own phone book and the Gig Harbor Post Office has three zip codes – 98335, 98329 and 98332 – assigned to it. Likewise, Mercer Island has its own zip code – 98040.

At best, factors four and five are a wash for Joint Petitioners. Given that Covington has neither its own zip code nor its own phone book, to the extent these factors weigh in one direction or the other, they weigh in favor of a finding that Covington is interdependent with the Seattle Urbanized Area. Even if these factors weighed in favor of Joint Petitioners, these two factors are to be given diminished weight in the overall *Tuck* analysis.

**6. Whether the Community Has its Own Commercial Establishments, Health Facilities, and Transportation Systems**

Likewise, the minimal information provided here is insufficient to demonstrate that Covington is independent of the Seattle Urbanized Area. While Covington may have a variety of small businesses located within its city limits, it does not have its own public transportation system. Like those residing in other Seattle/King County suburbs, residents of Covington are dependant upon King County Metro for public transportation. They are likewise dependant upon the Seattle Urbanized Area for longer distant travel as train, bus and air terminals are all located elsewhere in the Urbanized Area. Accordingly, at best this factor is a wash.

**7. Extent to Which the Specified Community and the Central City are Part of the Same Advertising Market**

Joint Petitioners claim that “residents of Covington do not need to travel to Seattle to seek out other media sources in order to find out what is happening in their community.” While that may or may not be true, that is an issue separate and apart from whether Covington and Seattle are part of the same advertising market; which they indeed are.

Covington and Seattle are part of the same advertising market. King County, in which Covington and Seattle are both located, is within the Seattle Arbitron Metro. King County is also within the Seattle DMA. Covington-Sawyer-Wilderness region falls within King County, and is therefore part of the Seattle DMA and Metro Service Area. Accordingly, the specified community and the central city are part of the same advertising market.

Furthermore, Covington is located within the Seattle Basic Trading Area.<sup>10</sup> BTAs are based on Rand McNally's Commercial Atlas & Marketing Guide. BTA boundaries follow county lines and include the county or counties whose residents make the bulk of their purchases in that area. BTAs are geographic boundaries that segment the United States for licensing purposes. For example, the FCC uses BTAs to license a number of services. Thus, for a number of licensing purposes, the Commission considers Covington to be interdependent with Seattle. The same conclusion should be reached here.

**8. The Extent to Which the Specified Community Relies on the Larger Metropolitan Area for Various Municipal services such as Police, Fire Protection, Schools, and Libraries.**

While Joint Petitioners point to Covington's small police force as evidence of independence, they neglect to mention the fact that the force is provided pursuant to a contract with the King County Sheriff's Department. *See* Attachment IX hereto. Thus, in actuality, Covington does not supply its own police services and is entirely dependant upon King County for those services.

While serving as Covington's police chief, that individual maintains his/her rank in the King County Sheriff's Department and is subject to reassignment within that department. *See*

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<sup>10</sup> The Seattle BTA is one of forty seven Major Trading Areas.

Attachment IX. The Covington Police web page is provided by the King County Sheriff's Department. Again, Covington is completely dependant upon King County for its police services. This fact is just another in a long line of indicators demonstrating that Covington is interdependent with the Seattle Urbanized Area.

Joint Petitioners also claim that Covington has its own fire department, but that is not true either. Covington is reliant upon Kent Fire and Life Safety and King County Fire District 37 for its fire fighting services:

The City of Covington was annexed into Fire District 37 at the time of the City's incorporation. Fire District 37 delivers services in connection with Kent Fire and Life Safety, through agreements that have been in place for more than 30 years. Prior to annexation, a portion of incorporated Covington was served by Maple Valley Fire and Life Safety, Fire District #43. This portion of the city is still served in the same manner through a contractual agreement with Fire District 37.

Kent Fire and Life Safety / Fire District 37 together operate 7 fire stations, a fire prevention office, public education unit, a regional training center and special operations teams trained in hazardous materials and various forms of rescue. There are 146 uniformed and 13.5 non-uniformed personnel for a total of 159.5. Total 24 hour staffing of command, suppression, and special operations personnel is maintained at a minimum of 24.

The two Kent Fire and Life Safety Stations primarily serving the Covington area are 72 and 75. Station 72 is located at the intersection of SE 256<sup>th</sup> Street and 140<sup>th</sup> Ave SE. Station 75 is located in the 15600 block of SE Kent-Kangley Rd. Fire District #43's Maple Valley Station primarily serving parts of Covington is Station 83, located at the intersection of SE 274<sup>th</sup> Street and 116<sup>th</sup> Ave SE.

See Attachment X hereto. City of Covington Comprehensive Plan, 10. Capital Facilities Element.<sup>11</sup>

Joint Petitioners also seek to rely on the Covington Water District (“CWD”) as being germane to the issue at hand. In fact, the Covington Water District is not located in Covington, but in Kent. Attachment XI hereto. Moreover, this entity is ratepayer owned and not run by the city of Covington. Indeed, members of the Covington City Council have taken pains to divorce the CWD from the City. Attachment XII hereto.

The CWD is “responsible for distributing the water permitted to it by the state Department of Ecology” and serves not only Covington, but surrounding areas as well.” See Attachment XI. The CWD does not appear to provide any other services. For example, Covington’s sewer service is provided by the Soos Creek Water and Sewer District (“SCWSD”) located at 14616 SE 192<sup>nd</sup> Street, Renton, Washington. SCWSD is a municipal corporation of King County, Washington and provides water and sewer services to almost 100,000 people in southeast King County, including Covington. Trash collection and recycling services are provided by Rabanco. Road maintenance, drainage, litter control and building maintenance for county facilities are provided by King County.

Furthermore, while the CWD does produce some of the water to serve its constituents, it also acquires water from the City of Auburn, Cedar River Water and Sewer, Seattle Public Utilities and the city of Tacoma to satisfy its needs. *Id.*

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<sup>11</sup> Only pages 1-2 are reproduced here. A portion of Covington is reliant on the Maple Valley Fire and Life Safety and King County Fire District 43.

As Joint Petitioners note, Covington does not have its own library. Rather, the Covington Library is part of the King County Library System (“KCLS”). According to the KCLS website, “KCLS is the third largest circulating library in the United States. Located in the Seattle area, the Library System includes 42 libraries, and a Traveling Library Center which serve over one million residents.”<sup>12</sup>

Likewise, Covington has no school district of its own. Rather, educational services are provided through the Kent School District. *See* Attachment X.

The evidence demonstrates that Covington relies almost entirely on the larger metropolitan area for its municipal services. To the extent the community provides its own municipal services, those services are not nearly as extensive as those that existed in *Huntington* and *KFRC*, neither of which were entitled to a first local service preference. *See* 192 F.2d at 34, 5 FCC Rcd 3224.

#### **IV. COVINGTON DOES NOT WARRANT A FIRST LOCAL SERVICE PREFERENCE**

Given the signal population coverage of Joint Petitioners’ reallocation proposal (?) and Covington’s size and proximity to the Seattle Urbanized Area, Joint Petitioners’ showing under the third *Tuck* criterion falls well short of establishing that Covington is independent of the much larger central city of Seattle and the Seattle Urbanized Area. Rather, the evidence demonstrates that Covington is interdependent with Seattle and the Seattle Urbanized Area.

As demonstrated above, factors 1-3 strongly suggest that Covington is interdependent with the Seattle Urbanized Area. The evidence also demonstrates that, at best, factors 4 and five

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<sup>12</sup> <http://www.kcls.org/kcls/abtfront.htm>

are a wash, though to the extent they favor a finding one way or the other, they weigh in favor of a finding that Covington is interdependent with the Seattle Urbanized Area. Factor six is a wash as the existence of commercial establishments in Covington is mitigated by the lack of a Covington public transportation system. Again, Covington's residents are entirely dependant upon King County Metro to meet their public transportation needs.

Joint Petitioners cannot dispute that Covington and Seattle are part of the same advertising market and do not assert otherwise. Thus, factor 7 strongly suggests that Covington is interdependent with Seattle.

Similarly, despite Joint Petitioners contentions to the contrary, Covington relies almost exclusively on the larger metropolitan area to meet its various municipal services such as police and fire protection, schools and libraries (factor 8).

Of the eight factors underlying the third *Tuck* criterion, **not one** weighs in favor of finding Covington is independent from Seattle and the Seattle Urbanized Area. The facts and circumstances demand a finding that Covington is interdependent with Seattle and the larger Seattle Urbanized Area and that it does not warrant a first local service preference.

Joint Petitioners' sole motivation here is to depart the rural community of The Dalles for the attraction of the much larger Seattle Urbanized Area. Any other finding would be to "condone an artificial and unwarranted manipulation of the Commission's policies." *KFRC*, 5 FCC Rcd at 7097. The proposed allotment does not warrant award of a first local service preference and should be treated "as simply an additional allotment to the urban area." *Id.* Accordingly, the Commission should not award a first local preference to Joint Petitioners, but

rather attribute all of the services of the Seattle Urbanized Area to Covington and consider the reallocation proposal pursuant to FM allotment priority four, "other public interest matters."<sup>13</sup>

**V. THE PROPOSED REALLOTMENT WOULD NOT RESULT IN A PREFERENTIAL ARRANGEMENT OF ALLOTMENTS**

**A. Citizens of The Dalles Have a Legitimate Expectation of Continued Service**

The proposed reallocation of channel 283 from The Dalles, Oregon to Covington, Washington will not result in a preferential arrangement of allotments. As indicated above, The Dalles and Covington are approximately the same size. The Dalles is currently served by five stations (four should the proposal be adopted) while Covington is served by no less than nineteen FM radio stations, all of which should be attributed to Covington in accordance with *Tuck*.<sup>14</sup>

Under FM allotment priority four, the proposed reallocation presents a comparison of (at a minimum) a 20<sup>th</sup> radio service to Covington and a fifth local service to The Dalles. The alleged net increase in coverage is illusory since the gain area is abundantly well served. No public interest benefit will be derived by allotting an additional channel to the already well served Covington area at the expense of The Dalles.

Furthermore, citizens of The Dalles have

a legitimate expectation that existing service will continue and this expectation is a factor we must weigh independently against the

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<sup>13</sup> *Greenfield and Del Rey Oaks, California*, 11 FCC Rcd 12681, 12684 (Allocations Branch 1996).

<sup>14</sup> *Greenfield and Del Rey Oaks, California*, 11 FCC Rcd at 12684. Joint Petitioners technical appendix (figures 8 and 9) attempts to create the illusion that there are only five other reception services available within the KMCQ(F) proposed 1 mV/m contour at Covington. Radio. Radio-Locator indicates that there are 23 FM radio stations within close listening range of Covington, Washington. KMIH(FM)'s general manager conducted a reception test for Covington, Washington at four different points within the city receiving reliable readings from nineteen FM radio stations. Attachment XIII hereto.

service benefits that may result from reallocating of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.

*Community of License*, 5 FCC Rcd at 7097 (footnote omitted). This weighing process is a simple one since no service benefits will result from the proposed reallocation.

Joint Petitioners failed to identify any public interest factors to offset this expectation of continued service and have failed to demonstrate that the proposed reallocation of channel 283 from The Dalles to Covington will result in a preferential arrangement of allocations.

**B. Loss of Service From KMIH(FM) and KGHP(FM)/K283AH Must be Considered**

As a public interest factor, the Commission should also consider the loss of service that will result from the loss of KMIH(FM) and KGHP(FM)'s translator K283AH.

**1. KGHP(FM)/K283AH Provides a Valuable/Irreplaceable Service to the Gig Harbor Community**

KGHP(FM) has been serving Gig Harbor and the surrounding area since 1988. Translator station K283AH was authorized to it to cover portions of the KGHP(FM) city of license area that lie behind hills, are within deep contour depressions within and near the city of Gig Harbor and/or are "shaded" by steep cliffs along the edge of the South Puget Sound.

The station broadcasts programs of music, news, local sports, public election candidate forums, Crimestoppers, and public service announcements. KGHP(FM) is a full participant in the National Emergency Alert System and provides weather and school cancellation information. KGHP is also a major participant in the local Pierce County Emergency Response operation,

including events related to traffic situations regarding the Tacoma Narrows Bridge. In this regard, KGHP has installed emergency power sources for the studio, main transmitter and for Translator K283AH and works in close cooperation with Peninsula Light Company, Century Telephone Company and with the Emergency Operations Center of Pierce County Fire District 5 – it's connection with Washington State Emergency Response and FEMA. The station also promotes The Gig Harbor Parade, The Blessing of the Fishing Fleet, various local club activities which benefit college scholarships and area concerts.

Translator station K283AH is central to these various operations and functions. The valuable services that KGHP(FM) provides to the Gig Harbor community will be substantially impaired should the proposed reallocation be adopted. KGHP(FM), operating in conjunction with Translator K283AH, is also a teaching facility, allowing students the opportunity to learn the radio art. This teaching aspect was recently recognized by the award of a two year grant from the federal Department of Education for the development of a National Curriculum in Radio Arts. Accordingly, should the Commission adopt the reallocation proposal, it will be working at cross purposes with the Department of Education. Attachment XIV hereto are letters in support of KGHP(FM)'s continued operation.<sup>15</sup>

## **2. KMIH(FM) Provides a Valuable/Irreplaceable Service to the Mercer Island Community**

KMIH(FM) has been on the air as an FCC licensed facility since 1969 and is operated in conjunction with the Mercer Island High School ("MIHS") radio vocational program.<sup>16</sup>

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<sup>15</sup> This Section is also submitted under the Declaration under Penalty of Perjury of Marcia E. Harris, Deputy Superintendent, Peninsula School District.

<sup>16</sup> This Section is also submitted under the Declaration under Penalty of Perjury of Nick De Vogel, KMIH(FM)'s general manager. Attachment XV. MISD like Peninsula has received numerous letters in support of its continued

This program teaches students the essentials of broadcasting. It teaches and promotes programming, production, promotions, Commission rules, community service, EAS, and other methods of radio-based emergency response, computer training in a broadcast setting, Internet web design, and engineering and radio theory.

KMIH(FM) provides an invaluable service to the school and the local area with its live broadcasts of community events and MIHS athletics. Broadcast of athletic events not only provides a special service to the community, but it also provides a singular opportunity for students to learn and experience the art of live play-by-play broadcasting and for the studio crew to experience live remote broadcasting from the technical side.

KMIH(FM) is an active member of the Washington State Emergency Broadcast team and MIHS students are trained and practiced in proper EAS procedures in accordance with the Commission's rules. Such procedures were put to the test in 2001 when a moderate earthquake shook Seattle. Within minutes, MIHS students were on the air dealing with the situation and providing much needed information to the community. The Mercer Island Department of Public Safety also relies on KMIH(FM). Attachment XVI hereto.

Over 60 students are currently directly involved in the MIHS radio vocational program though many more are involved in the station on a daily basis. Many KMIH(FM) graduates are now employed in the broadcast industry while many others have obtained apprenticeships out of high school or immediately became involved in high positions at college radio stations. The first hand experience they gained at KMIH(FM) undoubtedly played a great role.

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operation and exasperation over the potential for Joint Petitioners to usurp its frequency. For example, the KMIH(FM) website has received over 1,000 letters in support.

The loss of KMIH(FM) and the loss of the valuable educational resource that is the radio program at MIHS that will result from adoption of the reallocation proposal will be disastrous to the school district, the high school and the community at large. No countervailing public interest benefit will be obtained by adoption of the proposal. Attached hereto is a sample of the many letters in support KMIH(FM) has received.

**3. The Commission Should Grant/Establish an Allotment for KMIH(FM) at Mercer Island, Washington In Lieu of the Reallocation of Channel 283C from The Dalles to Covington**

Considering the valuable services KMIH(FM) provides to the Mercer Island Community -- services that it has been providing for over thirty years -- and given that it is one of only a few Class D stations still operating, rather than adopt the Joint Petitioners reallocation proposal, the Commission should instead adopt a special allocation granting KMIH(FM) the equivalent of Class A status and protection in accordance with the Class A minimum distance separations on channel 283 at Mercer Island, Washington.<sup>17</sup> Pursuant to Section 73.211(a)(3) Class A stations may have an effective radiated power of less than 100 watts provided that the reference distance, determined in accordance with paragraph (b)(1)(i) of this section, equals or exceeds 6 kilometers. KMIH(FM) satisfies this exception to the rule. Accordingly, the fact that KMIH(FM) transmits at less than 100 watts would not pose a bar to such an allocation.

KMIH(FM) currently operates twenty four hours per day/seven days per week. The station therefore more than satisfies the Commission's rules for station minimum operating schedules. *See* Section 73.1740 of the Commission's Rules.

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<sup>17</sup> As the licensee of the station, MISD will apply for the channel and construct the facility as authorized.

KMIH has performed a study indicating that no alternative channel – either in the reserved or non-reserved band – exists. Attachment XVII hereto. Commission precedent provides for the reservation of a non-reserved channel for non-commercial educational use in situations similar to this.<sup>18</sup> This proposed allocation will result not only in a preferential arrangements, but one far superior to that proposed by the Joint Petitioners. Such an allocation will provide/maintain a longstanding – truly local -- first local service at Mercer Island.

Adoption of this counterproposal will result in a preferential arrangement of allotments since it will serve to preserve the longstanding service KMIH(FM) has provided to the citizens of Mercer Island. By adopting this counterproposal, the Commission will not only fulfill the paramount responsibility in its implementation of Section 307(B) of the Communications Act by achieving a “fair, efficient and equitable distribution of radio service,” but it will do so consistent with the mandate that it on “the distribution of service, rather than of licenses or stations; the constituency to be served is people, not municipalities.” *National Association of Broadcasters v. FCC*, 740 F.2d 1190 (D.C. Cir. 1984).

## CONCLUSION

Application of the *Tuck* criteria in a manner consistent with Section 307(b), *Huntington* and *KFRC* demonstrates that Covington is interdependent with the vastly larger central city of Seattle and the Seattle Urbanized Area and that the proposed reallocation is not entitled to a first local service preference. Rather, the proposal must be examined under the Commission’s fourth allotment priority. Analysis of the proposal under that priority requires a finding that the

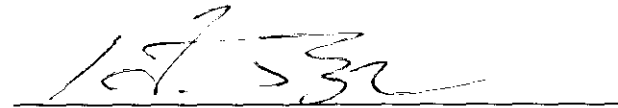
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<sup>18</sup> See *Bronson, Michigan*, DA 91-790 (Allocations Branch 1991); *Butte, Montana*, 9 FCC Rcd 2180 (Allocations Branch 1994); *Buhl, Minnesota*, 9 FCC Rcd 2180 (Allocations Branch, 1994).

proposal will not result in a preferential arrangement of allotments. The proposed reallocation of channel 283C from The Dalles, Oregon to Seattle, Washington should therefore be denied.

Respectfully submitted,

MERCER ISLAND SCHOOL DISTRICT AND  
PENINSULA SCHOOL DISTRICT NO. 401

A handwritten signature in black ink, appearing to read "H. J. Barr", is written over a horizontal line.

Howard J. Barr  
Their Counsel

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